

STATE OF MICHIGAN
COURT OF APPEALS

PAUL BURKE,

Plaintiff-Appellant,

v

E & L TRANSPORT, INC.,

Defendant-Appellee.

UNPUBLISHED

August 8, 2000

No. 209408

Wayne Circuit Court

LC No. 97-704830-NO

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order which granted defendant's motion for summary disposition¹ and dismissed plaintiff's action under the Handicappers' Civil Rights Act (HCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*² We affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc.*, 215 Mich App 198, 202; 544 NW2d 727 (1996). A motion under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). In reviewing a motion under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence filed by the parties. MCR 2.116(G)(5). In responding to the motion, the opponent must present evidentiary proofs showing that there is a genuine issue of material fact for trial.

¹ Summary disposition was granted under MCR 2.116(C)(7) and (10). Our analysis focuses on the trial court's decision to grant summary disposition under MCR 2.116(C)(10) and we affirm on that basis. Therefore, we need not address plaintiff's alternate claim that summary disposition was improper under MCR 2.116(C)(7).

² This act is now known as the Persons With Disabilities Civil Rights Act. The name of the act was changed effective March 12, 1998, after plaintiff filed his complaint. Therefore, we will refer to the act as the "HCRA" throughout this opinion.

If such proofs are not presented, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456 n 2; 597 NW2d 28 (1999).

To make out a prima facie case of discrimination under the HCRA, the plaintiff must show, among other things, that he is handicapped within the meaning of the HCRA. *Chmielewski v Xermac, Inc*, 457 Mich 593, 602; 580 NW2d 817 (1998). For purposes of the HCRA, a "handicap" must be a condition that substantially limits one or more major life activities. MCL 37.1103(e); MSA 3.550(103)(e).³ In *Stevens v Inland Waters, Inc*, 220 Mich App 212, 217-218; 559 NW2d 61 (1996), this Court, following federal law, defined "major life activities" as "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Important for our analysis, this Court further held that an impairment which does not affect the ability to obtain satisfactory employment with other employers does not substantially limit working as a major life activity. *Id.* at 218.

Here, plaintiff claimed that his height (6'10") prevented him from driving certain of defendant's trucks because in order to do so he had to bend his neck to keep from hitting the roof. However, his height did not affect his ability either to drive other trucks which defendant owned or to obtain employment with other trucking companies. Therefore, plaintiff failed to establish a genuine issue of material fact on the pivotal question -- whether he was handicapped within the meaning of the HCRA. Accordingly, we conclude that the trial court properly granted defendant's motion for summary disposition under MCR 2.116(C)(10). *Stevens, supra*.⁴

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry William Saad

³ Now MCL 37.1103(d); MSA 3.550(103)(d).

⁴ Because plaintiff did not establish that he was handicapped, we need not address whether defendant had a duty to accommodate the alleged handicap or whether defendant articulated a nondiscriminatory reason for firing plaintiff. Moreover, having decided that summary disposition was proper under MCR 2.116(C)(10), we need not decide if summary disposition was also proper on the ground that plaintiff's action was untimely because it was not commenced within the 180-day limitations period set forth in plaintiff's employment application.